

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

O.F., <i>aminor by and through her guardian</i>	:	
<i>and next friend</i> , N.S., c/o CHESTER	:	
SPECIAL EDUCATION LAW CLINIC	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 00-779
CHESTER UPLAND SCHOOL DISTRICT,	:	
et.al.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

May 10, 2000

Presently before the Court is the Motion to Dismiss of Defendant Pennsylvania Department of Education ("PDE") and Eugene M. Hickok (together, "Commonwealth Defendants"). For the reasons stated below, the Motion is Granted in part and Denied in part.

I. PROCEDURAL BACKGROUND

Plaintiff O.F. ("Plaintiff" or "O.F."), by and through her guardian and in care of the Chester Special Education Law Clinic, instituted this action against Chester Upland School District ("District") and the Commonwealth Defendants on February 11, 2000. The Complaint alleges that Defendants failed to provide Plaintiff with a Free Appropriate Public Education ("FAPE") as required under the Individuals with Disabilities Education Act ("IDEA"). Count II is a claim for violation of Section 504 of the Rehabilitation Act, whereas Count III states that

Defendants violated the American with Disabilities Act (“ADA”). Count IV is a § 1983 claim for Defendant’s violation of various federally protected rights of the Plaintiff. Count V is a claim for false imprisonment.

The Court previously ruled on the District’s Motion to Dismiss by an Order dated April 19, 2000 (“Order”), which contained many of the same arguments that the Commonwealth Defendants raise in the present Motion. Specifically, the Court stated in the Order that Plaintiffs had failed to state claims under § 1983 for violations of the IV, V and XIV Amendments. Count V for False Imprisonment also failed because the District was immune under the Political Subdivision Torts Claim Act. The Court held that the Plaintiff had sufficiently stated a claim under the IDEA, ADA and Rehabilitation Act.

II. FACTUAL BACKGROUND

According to the Complaint, O.F. is a resident of the District who has been diagnosed with a severe emotional disturbance. The emotional disturbance entitles O.F. to receive special education and related services pursuant to the IDEA and medical assistance as an eligible disabled child pursuant to Title XIX of the Social Security Act. The instant action arises from an incident which occurred on February 11, 1998. On that date, O.F. attended the District’s Columbus Elementary School. Early in the afternoon, O.F. was physically threatened by another student in the presence of District employees. O.F. became agitated and started screaming. She ran into the principal’s office where she was restrained by three District employees. Eventually, Chester police officers arrived. They proceeded to handcuff O.F., place her legs in restraint and removed the child by ambulance to Crozer-Chester Medical Center. Ultimately, O.F. was transferred to the Devereux/Mapleton School (a private school approved by the PDE).

III. LEGAL STANDARD

Defendants argue that the cases should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocksv. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp 893, 895 (E.D. Pa. 1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Namiv. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

IV. DISCUSSION

A. §1983 Claims :

A state, its agencies, and its officials in their official capacities are not "persons" subject to liability under § 1983. See Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989). It is clear that the PDE, as a state agency, is not a person. Likewise, Mr. Hickok is being sued in his official capacity as Secretary of the PDE. Therefore, he does not qualify as a

person under § 1983 either. Accordingly, all of Count IV must be dismissed with respect to the Commonwealth Defendants.

B. False Imprisonment Claim :

The Plaintiff's false imprisonment claim is barred by sovereign immunity. "The Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. C.S.A. § 2310. The intentional tort of false imprisonment is not within one of the nine narrow exceptions to sovereign immunity set forth in 42 Pa. C.S.A. § 8522(b). Therefore, the claim must fail against the Commonwealth Defendants since PDE is a state agency and Hickok is the secretary of that agency.

V. CONCLUSION

The Plaintiff's claims under § 1983 and for False Imprisonment are Dismissed. The remainder of the Defendant's Motion is Denied.

An appropriate Order follows.

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

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<i>andnextfriend</i> ,N.S., c/oCHESTER	:	
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Plaintiff,	:	
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CHESTERUPLANDSCHOOLDISTRICT,	:	
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	:	
Defendants.	:	

ORDER

ANDNOW,this10thdayofMay,2000,uponconsiderationoftheMotionto Dismiss of Defendants Pennsylvania Department of Education and Eugene Hickok (together, the “Commonwealth Defendants”) (Docket No.9), and the Plaintiff’s Response thereto (Docket No. 11); it is hereby **ORDERED** that Defendants’ Motion is **GRANTED** in part and **DENIED** in part. More specifically, it is **FURTHER ORDERED** that:

- 1.Count V of Plaintiff’s Complaint for False Imprisonment is Dismissed.
- 2.Count IV of Plaintiff’s Complaint seeking relief under § 1983 is Dismissed with regard to the Commonwealth Defendants.
- 3.In all other respects, Defendant’s Motion is **DENIED**.

BY THE COURT:

RONALD L.BUCKWALTER, J.